

**COURT AND LEGAL FOR CHILD ABUSE,
NEGLECT, DEPENDENCY AND STATUS OFFENSE**

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COURT AND LEGAL ISSUES

The prevention and intervention of child abuse and neglect cannot be accomplished through the court system alone. The legal process is just one tool for the protection of children. Child maltreatment cases are handled in a variety of courts. As a result, the rules and procedures that govern these cases may differ, depending on the type of proceeding within which an allegation is brought forth.

Use of the court is not viewed as a last resort action, but as purposefully initiated constructive action on the behalf of the child and family, to assist in accomplishing specific outcomes. The Protection and Safety Worker has legal responsibilities to the child, the family, and the Department. Staff responsibilities are described in the following information. Consultation and/or confirmation of decisions made by the worker regarding situations involving the court system or legal process are encouraged when unique situations exist or the worker is in need of such support.

SECTION I

COURT AND LEGAL PROCESS

Children are placed in the care and custody of the Department through one of four ways:

1. Law enforcement pickup for temporary custody;
2. Court intervention;
3. Voluntary relinquishment;
4. Voluntary placement agreement. (Please refer to Out-of-Home Placement Guidebook, Section XIV Voluntary Placement.)

This guidebook focuses on children who are placed with the Department through law enforcement, the court or the parents' voluntary relinquishment.

Definitions

Beginning of foster care: Federal statute defines the beginning of foster care as the earlier of the date of the first judicial determination of child abuse or neglect OR 60 days after the placement in out-of-home care. Our Department will use the date of 60 days after the placement in out-of-home care.

Statutory Reference: Neb. Rev. Stat. 43-533

Month: Federal and state statute require that filing of a petition to terminate parental rights occur when a child has been in out-of-home placement for fifteen of the most recent twenty-two months, unless the court finds that there exists a compelling reason not to file. Federal statute does not define the term "month". Nebraska State statute defines "month" as a calendar month. This is the direction Nebraska will follow. Therefore, a month will be counted for this purpose if it is an entire month, such as all of January.

Statutory Reference: Neb. Rev. Stat. 43-1312(3)

Law Enforcement Pick-up for Temporary Custody (48 Hours)

When a law enforcement officer assumes temporary custody of a child and places that child in temporary custody of the Department, not to exceed 48 hours without a court order, the worker will:

1. Consent to any necessary emergency medical, psychological or psychiatric treatment for the child;
2. Secure a temporary placement for the child in the least restrictive setting, consistent with the child's best interest as determined by the worker;
3. Supervise the temporary placement of the child;
4. Refer case to intake for screening;
5. Follow-up with law enforcement, county attorney, or court to determine if a court order for temporary custody will be issued.

(WORKER NOTE: If the child is not a resident of Nebraska and the situation didn't involve the child's parents in the State of Nebraska, law enforcement is mandated to attempt to notify the child's parents or relatives.)

The Department has NO OTHER AUTHORITY in the case until a court order is received placing the child in the custody of the Department of Health and Human Services. A court order of temporary custody MUST be issued within 48 hours after the initial temporary custody, if the child is to remain in placement. This time period includes weekends and holidays and is mandated by state law. The law enforcement officer is to make a full written report to the county attorney and the Department within 24 hours of taking a child into temporary custody.

If a court order placing the child in the temporary custody is not issued within 48 hours of taking the child into custody, the temporary custody of the Department TERMINATES. If the 48 hours has expired the Department cannot provide transportation for the child and alternative arrangements for returning the child must be made.

IMPORTANT NOTE: Without a court order or warrant, only a law enforcement officer can take temporary custody of a child who is in immediate danger. If a law enforcement officer does not take action, and the worker believes a child is in danger, the worker will seek emergency court action by contacting the county attorney.

Statutory Reference: Neb. Rev. Stat. 43-248 and 43-250(4).

Court Intervention Requested by the Department

Once risk has been determined by the First Assessment and voluntary services will not provide for the child's safety and/or reduce risk, there are two Department responses:

1. Request for Temporary Custody.
2. Request for Petition.

Request for Temporary Custody

If an emergency situation exists and the worker has pertinent information, this information will be shared immediately with the county attorney and law enforcement and a request for immediate court action will be made.

(WORKER NOTE: If the county attorney and/or law enforcement decline to take action, the worker may refer the case to the legal team for review.)

Request for Petition

When court intervention is needed the following information will be included in a request to the county attorney to file a petition:

- General information on each family member residing in the home and any absent biological and/or legal parent including name, address, date of birth, etc.;
- Description of the presenting problems which meets the statutory requirements for the population served including the history and time frames of problem;
- A factual basis to support specific allegations and establish the need for court involvement;
- Names and address of any person who has first hand knowledge of and, could provide testimony directly related to the allegations specified.
- Request that the petition address:
 1. Reasonable efforts:
 - a) Have been made to prevent removal from home;
 - b) Were not possible because of the emergency of the removal; or
 - c) Are not required due to certain actions of the parent (see Reasonable Efforts Section of this Guidebook)
 2. Contrary to welfare. (See Reasonable Efforts Section of this Guidebook).

Cases Appropriate for Court Involvement

Appropriate referrals include but are not limited to the following situations:

- A child has been relinquished for adoption and is likely to remain or has remained in the Department custody for longer than one year. A dispositional hearing must be held

within one year of the child's placement, so the request for a filing must be made before the end of a calendar year;

- A child in out-of-home placement is not able to be returned to his/her parent, but whose voluntary foster care placement is likely to continue for more than 6 months;
- Repeated incidents of abuse and neglect have occurred while in-home services are provided, and court intervention is necessary to protect the child;
- Preventive services have failed to alleviate the problems which caused a risk of placement, and placement is needed for longer than six months or the parent is unwilling to make a voluntary placement;
- Evidence of abuse, neglect, or sexual abuse by a parent has been discovered during the first assessment phase and court intervention is necessary to protect the child or to achieve permanency for the child;
- Action regarding a non-custodial parent is needed to achieve permanency for the child where the plan is adoption, and that parent has neglected his/her parental responsibilities (including, for example, repeated failures to establish a plan for the child or failure to maintain regular visitation); and
- A parent is unwilling to relinquish, and the Department has determined that a judicial termination of rights is necessary.

Detention Hearing

(Temporary Custody)

The detention hearing is often the first in a series of court hearing conducted with the court system. The purpose of the is hearing is to determine whether or not there is sufficient information to justify continued temporary custody of a child. This hearing is usually held after the filing of the petition and within forty-eight hours of the law enforcement pick-up or the earliest available court calendar day.

All legally interested parties are notified of this hearing when they are served with a copy of the petition. This hearing is one point at which counsel are often appointed for indigent parents and a guardian ad litem appointed for the child.

By statute, the court can enter an order for continued detention or placement only if it finds that continuation of the child in his or her home would be contrary to the health, safety or welfare of the child and that reasonable efforts were made to preserve and reunify the family, or that such reasonable efforts are not required.

Pre-Adjudication Phase

This refers to the time that elapses between the detention hearing and the adjudication hearing. State law states:

"All cases filed under subdivision (3) of Section 43-247 (NOTE: 3(a) is against the parent and 3(b) alleges that the child is a status offender.) shall have an adjudication hearing not more than ninety days after a petition is filed. Upon showing good cause, the court may continue the case beyond the ninety-day period."

In other cases the mandated time frame is extended to six months after the filing of the petition.

Statutory Reference: Neb. Rev. Stat. 43-278.

At this point in a case, the worker will:

- Provide information about the child and family to the county attorney;
- If the court has placed the child in the temporary custody of the Department, a written report addressing the location and needs of the child will be filed with the court within 30 days of the custody date. NO OTHER INFORMATION about the facts of the case will be included in the report so as not to compromise the due process rights of the parents. (Please refer to Section VII "Initial Report to the Court");
- Inform the court and all interested parties (including tribal authorities in cases of Native American children) of any significant decisions that are made regarding the child's placement.

First Appearance Hearing (Pre-Trial)

The court hearing prior to the adjudication is referred to under a variety of headings across the State due to the discretion of local judicial areas, Some terms include but are not limited to the following:

- The First Hearing
- The First Appearance
- The Pre-Trial
- The Arraignment (usually applied to adult criminal cases or juvenile status or delinquency cases)
- The Admit and/or Deny (usually applied to juvenile status or delinquency cases)

The purpose of this hearing is to advise the parent(s) in abuse or neglect or dependency cases or the juvenile in status or delinquency cases of the petition filed in the parent's or juveniles interest, the allegations included in the petition and the parent's or juveniles legal rights as those rights pertain to the legal process. The parent(s) or juvenile may in turn advise the court of the parent(s)' or juvenile answer to the allegations. If an admission is given to the allegations included in the petition or amended petition, the court proceeding may and often does advance to the adjudication hearing. If the parent(s) or juvenile denies the allegations in the petition or amended petition, the court will set the matter for trial at the adjudication hearing.

Adjudication Hearing

The adjudication hearing is the court proceeding in which it is determined whether the allegations of the petition are supported by legally admissible evidence or are true by admission on the behalf of the parent(s) or juvenile.

In some instances, especially with those cases involving individuals currently involved with the court through similar circumstances (such as previously adjudicated status offenders), the court may proceed to immediate disposition if no legal counsel objects.

At adjudication the worker will:

- _Be present at the adjudication hearing, if noticed, and provide testimony as required or requested by the parties involved.

Inadequate Adjudication

Inadequate Adjudication: A case has been adjudicated according to the definition of a subsection under the Nebraska Revised Statute 43-247. Upon assessment of the family by the worker, the worker determines that the adjudication will not allow for appropriate services to be initiated that will adequately address the identified issues of the child or family.

Examples:

- A child is adjudicated as a status offender or a status offender and delinquent who has committed a violent crime against a person. Upon assessment, the worker discovers this criminal act wasn't an isolated incident and the child has been involved in other violent acts. With additional information gathered from the family and collateral sources, the worker determines several safety risk factors to the community at large. The worker also determines there are no appropriate services the Department could offer without compromising the safety of the community. This child may be more appropriately served by another state agency;
- A child is adjudicated as a dependent child based on acting out behaviors.

Upon assessment, the worker discovers the child was sexually abused by a parent and the child's behaviors appear to be a symptom of greater family issues. As a result of the "no fault"

filing on behalf of the parents, appropriate services cannot be incorporated in the court-ordered plan of rehabilitation.

Policy: When an inadequate adjudication is identified, written information will be provided to the county attorney requesting an additional adjudication. This information will include:

1. Case name, court docket and page number.
2. Updated information gathered during the assessment.
3. Description of the family's current situation.
4. Establish a factual basis for further court action.
5. Date by which the Department needs a response. (Recommended response time no more than 10 working days.)

If the county attorney fails to respond to the information within the requested amount of time, duplicate information will be forwarded to the Department legal support team for review and response.

If the protective service worker is aware of a pending court hearing regarding a case and a request for further court action has been forwarded to the county attorney, time is crucial. The worker will contact the Department legal support to advise of the current circumstances. The worker may request:

- Legal counsel to be present at the scheduled hearing.
- Legal counsel to contact the county attorney in an attempt to expedite a response to further court action.
- Legal advise regarding recommendations to the court in specific reference to the Department's ability to offer adequate, appropriate services to the family to address the identified issues.

When a guardian ad litem has been appointed for a child, the worker may use the child's legal representation to address the court about services in the best interest of the child.

Pre-Dispositional Phase

This is the time that elapses between the adjudication hearing and the initial disposition hearing.

Following the adjudication the worker will:

- Conduct the appropriate assessment (either first assessment or a family assessment) to determine family service needs;
- Review the case to determine if the case has been adequately adjudicated to allow for appropriate service delivery;
- Prepare the Case Plan/Court Report for the court and all other interested parties concerning the circumstances of the child and family with a recommended case plan and a specific request for child support, if the child is in out-of-home placement. The report will be submitted at least three days (or time frame established by local jurisdiction) prior to the initial dispositional hearing to assist the court in arriving at an appropriate plan for rehabilitation. (Please refer to Section VII "Case Plan and Court Report".)

Child Support

Child support is an important element in maintaining parental responsibility for children in out-of-home placement. The worker will incorporate, under this premise, a specific request for child support in each report offered to the court.

According to Nebraska statute, parents and step-parents (while married to biological parent) are responsible for child support. If a child is placed in foster care, the worker will ask the county attorney to consider child support and health insurance. If a parent receives child support from the non-custodial parent, that payment should also be addressed by the court in a specific order for child support. When the court awards custody to the Department, any existing child support orders will be assigned to the Department.

Statutory Reference: Neb. Rev. Stat. 43-512.07.

In most situations, child support payments are made to the Clerk of District Court in the designated jurisdiction where the child support order was originally granted. The support payments are then sent to the Department's Central Office where the funds are used to defray the child's placement and maintenance expenses.

Child Support Enforcement

The Foster Care Income Maintenance (IMFC) worker refers the case to the Child Support Enforcement Unit after the IMFC case is opened. All cases will be referred except when:

- A child is placed in foster care through a voluntary placement; or
- Parental rights have been terminated.

Child Support Enforcement workers will assist in securing child support according to the parent(s)' income or assets and payments equivalent to those already established by guidelines used in District Court systems for civil matters, for example, divorce cases.

Initial Dispositional Hearing

This hearing is to determine what will be done with or by a child or parent(s) who is under the court's jurisdiction which has been adjudicated by the court. At this initial dispositional hearing, the judge will order the implementation of a plan of rehabilitation for the family or will terminate the court's jurisdiction if appropriate.

At the Dispositional hearing worker will:

- Attend the hearing and provide testimony as requested and provide oral recommendations if necessary;
- Prior to the actual hearing, ask the county attorney to recommend that the court find that reasonable efforts have been made or are not required, adopt the elements of the case plan, and order child support, if the child is in out-of-home placement; and
- Request a review of the court's order by the Juvenile Review Panel within ten (10) days allowed in Statute, if the court does not incorporate elements of the case plan or does not order child support if required and applicable, or orders a specific placement contrary to the recommendations of the Department. (Please refer to Juvenile Review Panel in Section II, page 14.)

Dispositional Review Hearings

These hearings are judicial re-examinations of the court's previous orders. The legal counsel for all parties will have the opportunity to present evidence or oral commentary on the case's progress or lack thereof. The judge will again re-issue a court order reflecting a current plan of rehabilitation or will terminate the court's jurisdiction if appropriate. State law mandates that dispositional review hearings must take place at least once every six months following the initial disposition hearing for children in foster care.

Statutory Reference: Neb. Rev. Stat. 43-1313.

The worker will:

- Prepare the Case Plan/Court Report for the court and all the interested parties concerning the current circumstances of the child and family and the family's progress achieved in the established, court adopted, case plan for rehabilitation. The report will include further recommendations regarding continued court involvement and case plan for the family. The report will be submitted at least three days (or time frame established by local jurisdiction) prior to the dispositional review hearing, (Please refer to Section VII "Case Plan and Court Report");
- Attend all dispositional review hearings and provide testimony as requested and provide oral recommendations if necessary;
- Request a review of the court's order by the Juvenile Review Panel within 10 days allowed in Statute if the court does not incorporate elements of the case plan or does not order child support if request and applicable, or orders a specific placement contrary to the recommendations of the Department. (Please refer to Juvenile Review Panel in Section II, Page 14.)

Between dispositional reviews, Department staff will notify the court and all interested parties including tribal authorities if appropriate, of all significant decisions made regarding the child's placement, including:

- Any change in placement, including return home or removal from a parental home

NOTE: Written notice will be sent to all interested parties at least seven days before the placement is changed from what a court had previously determined was an appropriate placement. The Department will make immediate changes in placement without court approval only if the child is in a harmful or dangerous situation OR when the foster parents request removal. Court approval will be sought within 24 hours of an emergency change in placement to comply with Statute. (Please refer to Forms Section VIII: Change of Placement Notice".)

Statutory Reference: Neb. Rev. Stat. 43-285.

- Approval for the child's marriage or entrance into the armed forces.
- Department's plan to discharge a youth.
- Removal from a foster home as a result of alleged or substantiated abuse or neglect or licensing action.
- Any change in the case plan affecting the parents.
- Any other significant change in the plan for the child.

Permanency Hearings

Federal and state statutes require several types of permanency hearings, which are described below:

- a) When the court determines that reasonable efforts to preserve and reunify the family are not required, a permanency hearing shall be held within 30 days after that determination.

- Purpose and required finding: Appropriateness of the permanency plan.
 - Case plan should include when the child will be referred for termination of parental rights, placed for adoption with a fit and willing relative, or placed with a guardian.
 - Court report should include reasonable efforts being made to place the child in a timely manner in accordance with the permanency plan and steps being taken to finalize the permanency placement of the child.
- b) When the child is in out-of-home care, a permanency hearing is required no later than 12 months after the child entered foster care AND ANNUALLY THEREAFTER during the continuation of foster care.
- Purpose and required finding: Appropriateness of the permanency plan and whether, if applicable, and when, the child will be:
 - Returned to parent;
 - Referred for filing of a petition for termination of parental rights;
 - Placed for adoption; or,
 - Referred for guardianship.
 - Case plan and court report should include the above information.
- c) When the child has been in out-of-home care for 15 of the last 22 months, under the responsibility of HHS, within 30 days the court must hold a hearing.
- Purpose and required finding: Whether there is an exception to the requirement of a filing of petition for termination of parental rights.

NOTE: If rights of BOTH parents are extinguished by death, termination of parental rights, or voluntary relinquishment, or if a petition for termination of parental rights already is filed, this hearing is not required.
 - Court report should include information to show progress toward the permanency goal recommended by HHS. If the recommendation is not to file a termination of parental rights petition, the reason(s) for this recommendation must be clearly explained.
 - Case plan should include the permanency plan for the child.

Statutory Reference: Neb. Rev. Stat. 43-1312 and 43-254, and Federal Adoption and Safe Families Act.

Reasonable Efforts

Federal and state statutes require two different types of reasonable effort findings by the court.

1. Reasonable efforts regarding removal of a child from his or her home or to preserve or reunify the family:
 - At the detention hearing, the court may enter an order continuing detention or placement upon a written determination that continuation of the child in his or her own home would be contrary to the health, safety, or welfare of the child. The finding of continuation in the home being contrary to the health, safety, or welfare of the child is applicable only at the hearing which removes the child from his or her home. If it does not appear in that order, the child is not and cannot in the future become eligible for federal Title IVE funding, unless the child is returned home and subsequently removed from home by the court, and that reasonable efforts were made to preserve and reunify the family, or that reasonable efforts to preserve or reunify are not required. Absence of these findings renders the child ineligible for federal Title IVE funding.

Reasonable efforts must be made to attempt to eliminate the need for removing the child, or, after removal, to make it possible for the child safely to return home.

The court can find that such reasonable efforts are not required if:

- The parent has subjected the child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse;

- The parent has committed first or second degree murder to another child of the parent; committed voluntary manslaughter to another child of the parent; aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the child or another child of the parent, or committed a felony assault which results in serious bodily injury to the child or another child of the parent; or
 - The parental rights of the parent to a sibling of the child have been terminated involuntarily.
2. Reasonable efforts to place the child into a permanent situation: If the court has determined that reasonable efforts to preserve the family or reunify are not required, then the court at subsequent permanency hearings is required to make a finding of whether reasonable efforts are being made to place the child in a timely manner in accordance with the permanency plan.

Notice of Court Review and Participation

The court is required to provide notice of court reviews regarding children in out-of-home care to the Department, the parent or guardian when parental rights are intact, the child if (s)he is age fourteen or over, the child's foster parent, the guardian ad litem, the State Foster Care Review Board, and preadoptive parents or relatives who are caring for the child.

Statutory Reference: Neb. Rev. Stat. 43-1314.

SECTION II

REVIEW OF COURT ORDERS

From the date of the court order, the Department has 30 days to appeal the order. Appeals are generally filed when there is misunderstanding or presumption that the Department is financially responsible for the cost of services NOT associated with the case plan or care and maintenance of a state ward. Appeals have also been filed regarding adequate adjudications for children who are made wards. The Department has ten days, from the date of the court order, to request a review by the Juvenile Review Panel. (For more information, please refer to "Juvenile Review Panel" page 14 in this Section.) If an order is received after the ten and 30 day time frames, orders will still be reviewed and addressed if problematic.

A systematic review of all court orders will occur to ensure:

- Due process;
- Compliance with the law ensuring least intrusive service provision;
- The order contains the necessary language for the Department to receive federal funding;
- That the child and family fall within the eligibility criteria for services through the Department.

Staff Responsibilities

Worker	Upon receipt of a written or oral order, refer order to his/her supervisor for immediate review.
Supervisor	Review all orders and advise worker of any problems or questions. Mobilize legal support if required and make referral. Monitor progress and resolution of order.
Legal Support	Review problematic orders. Prepare legal response if required. Complete legal action if required. Advise worker and supervisor of progress. Resolution of problem.

NOTE: The Department will carry out an order unless the Department has filed an appeal and a stay of the court order has been issued, or the Department Legal Division has advised otherwise, or an interim order has been entered.

A determination will need to be made that the child or family fall within the eligibility criteria for services through the Department. (See 390 NAC 1.006, Population Served.)

Elements that SHOULD be in a court order are:

- A statement that the child has been adjudicated under Neb. Rev. Stat. 43-247 (3)(a), (3)(b) or (8). This is not required for initial detention orders; and
- A statement about the parents' financial responsibility for a child in out-of-home care, including maintenance of medical insurance; and
- A clear statement that the child has either been placed under the supervision of the Department or committed to the legal custody of the Department; and
- If the child is removed from the parental home, a clear statement that continuation of the child in the home would be contrary to the health, safety, or welfare of the child (required only in the detention order); and
- If the child is removed from the parental home, or maintained in out-of-home placement, a clear statement that reasonable efforts have been made to:
 - a. Prevent or eliminate the need for removal of the child from the parental home; or
 - b. Make it possible for the child to return home safely; or
- If the child is removed from home or maintained in out-of-home placement, a clear statement that reasonable efforts to preserve or reunify the family are not required.

Elements that SHOULDN'T be in a court order are:

- A statement that the child has been adjudicated under Section 43-247, 1, 2, or 4 R.R.S. 1988, unless there has also been an adjudication under Section 43-247 3(a), 3(b), or 8, R.R.S. 1988;
- A statement ordering a specific placement, treatment, educational program or payment contrary to the recommendations or a case plan of the Department;
- A statement ordering the commitment to the Department with concurrent commitment to the Nebraska Department of Corrections or the Nebraska Department of Public Institutions (dual custody);
- A statement ordering the Department to pay for services to parents, unless parents are otherwise eligible for services ordered;
- A statement ordering the Department to pay for services to child or family when the child hasn't been placed in the Department's custody;
- Vague or unclear language regarding the child's adjudication status or the assignment of custody;
- A Nunc Pro Tunc order that appears to be amending a previous order rather than merely correcting an error. Passage of a substantial amount of time since the original order was entered is cause for concern.

Statutory Reference: Federal Adoption and Safe Families Act and Neb. Rev. Stat. 43-254, 43-284 and 43-1315.

Juvenile Review Panel (Three-Judge Panel Review)

Provisions for this type of appeal become relevant after adjudication has occurred and the Department's proposed plan for care, placement, and services is filed with the Court. Any party may raise an objection to the plan. (It is generally accepted that "parties" will be considered to be the county attorney, the guardian ad litem and/or public defender, the parents and/or their attorneys, and the child if represented by an attorney rather than a guardian ad litem.) If the court determines that the preponderance of evidence shows that the Department's plan is not in the child's best interest, the court is required to disapprove the Department's plan. Should such disapproval occur, the Court will enter an order requiring that the Department's plan be altered, modified or completely revised.

The Department will have an opportunity to appeal such an order. Filing of the appeal must occur within ten days from the date of the order. There will be no options for further hearing on the matter, and thus the hearing record that has already been created will be the only one available to support our position. ("On the record" is defined as a formal hearing, either transcribed by a court reporter or tape recorded.) Likewise, if another party objects to the court-ordered plan, that party also will have only ten days from the date of the order in which to appeal for review. Once an appeal has been filed, there is a mechanism within the Supreme Court to create a three-judge panel which will review the matter based on the record only. When an appeal is filed, the court's order is stayed until the panel's decision is entered; during the interim, the Department will continue to implement its plan.

Types of orders which should be considered for appeal include:

- An order which modifies, alters or completely discards the Department's plan;
- An order which either alters the specifics or is more specific than the plan submitted by the Department;
- An order requiring a placement with which the Department strongly disagrees if the worker has an alternative plan.

The worker and supervisor are to make an initial decision regarding appropriateness of an appeal. If they believe that an appeal should be filed, immediate contact must be made with the

Department's Legal Support Team. The decision regarding the appeal will be made jointly between the involved staff and the Department Legal Support Team.

The information considered in an appeal of the court's order of a change in plan will be what is on the record. The record must reflect information which documents why the case plan is in the child's best interest. No matter how good the rationale or justification is for our plan, if that information hasn't been presented to the court at a formal hearing, it cannot be considered in the appeal. Therefore, the plan must be shared and discussed with relevant parties (for example, guardian ad litem, parents, their attorney, and county attorney) long enough before the hearing to determine if the plan will be challenged at the hearing. If a challenge appears likely, the worker and supervisor are encouraged to consult with the Department Legal Support Team regarding how to proceed. Options generally will include:

- Negotiating a plan which will be acceptable to all parties; or
- Assuring that the information presented in court will be adequate to meet the standard or "preponderance of the evidence" for an appeal.

Consideration should be given to:

1. Assuring that the rationale presented is specific and complete; and/or
2. Using an expert witness to establish appropriateness of the plan.

In some cases, the worker can be qualified as an expert by presenting a resume which includes education, experience, and/or training received, including Department-provided training. In other cases, it might be necessary to call others as witnesses. This decision should be discussed with the Department's Legal Support Team.

SECTION III

OTHER COURT INVOLVEMENT

State Wards Involved in Delinquent Acts

Policy: When a ward who has a prior adjudication as abused or neglected or dependent or status offender which is still in effect, and then is adjudicated as a delinquent, the Department will continue to provide services to the child and family, unless the court terminates the Department's custody. If the ward is involved in serious criminal, violent, or sexually abusive behavior, the Department may be unable to provide an appropriate plan for the child or to protect the community from the child's behavior. The protective service worker will advise the court of the facts as they relate to appropriate service from the Department and recommend a more appropriate disposition, such as commitment to the Nebraska Department of Corrections. The worker may consult with the Department's legal representatives when determining if a recommendation to the court for termination of the Department's custody is appropriate.

If a ward is adjudicated as delinquent, protective service staff will request that the court assign a probation officer if the child is to be placed on probation. If a child is placed on probation, the probation MUST be supervised by a probation officer. The child's worker is not authorized to act as a probation officer. If a protective service worker is appointed as a probation officer by the court, the worker will inform the legal support staff for action.

Statutory Reference: Neb. Rev. Stat. 43-286 (1) (a).

Involvement of More Than One Court With a Child and Family

When more than one court (such as district, juvenile, or county court) is involved with a child and family, the worker may contact the county attorney regarding consolidation of the cases or transfer of jurisdiction from one court to the other so that only one court is involved with the family and child.

When more than one juvenile court is involved and unless there is a transfer of jurisdiction or consolidation, the later court order takes precedence. When a second juvenile court takes jurisdiction, the worker will inform the court(s) which has taken jurisdiction of the first court's jurisdiction and recommend to the first court that its jurisdiction be terminated or suspended unless the court directs otherwise.

When the worker believes that the prior court should remain active (for example, to address issues with which the other is not involved), the worker may make this recommendation.

Involvement and Role With District Court

The worker will not perform custody investigations or conduct home studies for district court unless the request is from a Nebraska court and there has been adjudication of abuse, neglect, or status offense.

When custody or supervision of a family or a child has been awarded to the Nebraska Department of Health and Human Services through district court, the worker will provide all services necessary and consistent with Department policies. This includes but is not limited to requesting that the court, if it has not done so:

1. Appoint a guardian ad litem for the child;
2. Schedule and hold appropriate judicial reviews of the disposition and hold required permanency hearings, if the child is in out-of-home placement; and
3. Modify its disposition to reflect that it has complied with the reasonable efforts requirement and it has ensured that the child is placed in the least restrictive setting possible and intervention with the family is the least intrusive necessary.

The worker will forward his/her recommendation to the court in writing, with a copy sent to the guardian ad litem when one is assigned, and will file a copy in the case record. If there are persistent problems with the district court in regard to meeting these expectations, all attempts must be made within the district to rectify the problem. If these efforts are unsuccessful, the district administrator or his/her designee will contact the Legal Services Support Team for assistance in resolving the issue.

Coordination with Courts Regarding Native American Children

The county attorney or another attorney for a party bringing the action, such as, a guardian ad litem, is responsible for providing notification to tribes and parents regarding judicial actions.

To assist in that procedure, the worker will:

1. Notify the county attorney immediately if information is obtained that a child is or may be Native American;
2. Attempt to determine the child's tribe and provide that information to the county attorney; and
3. Cooperate in an orderly transfer of the case to tribal court when appropriate.

The court may transfer jurisdiction upon the petition of the parent, Native American custodian, or Native American child's tribe. The Native American custodian or the child's tribe has the right to intervene at any point in the proceeding.

SECTION IV
VOLUNTARY RELINQUISHMENT

Policy

The Department's relinquishment services consist of:

1. Relinquishment Counseling

The purpose of relinquishment counseling is not to obtain a relinquishment but rather to provide information to parents to ensure that he/she is making an informed decision, keeping in mind the philosophy that, if possible, children belong with their parents. Counseling includes advising the parent(s) of services that will help him/her to parent the child. The parent(s) may receive counseling from alternative sources, for example, adoption agencies.

2. Completing the relinquishment and processing the legal documents when a determination has been made that relinquishment is in the child's and family's best interest.

The Department will provide relinquishment of parental rights services in the following instances:

1. At parental request when the child and family are receiving child welfare services through the Department.
2. When a protective service worker is considering action to terminate parental rights.

Relinquishment services can be provided either directly or through a referral to another agency. Both the child (consistent with age) and the family will receive appropriate counseling regarding the potential relinquishment.

Relinquishment of a child to the Department is effective upon written acceptance by the Department. Relinquishment to the Department is irrevocable and transfers guardianship and full parental rights to the Department. (See Special Circumstances on Relinquishing a Native American Child later in this Section.)

Counseling for Parents

During relinquishment counseling, the parents will be informed of:

1. The legal meaning of relinquishment, including the loss of all parental rights and responsibilities and the fact that signed, accepted relinquishment cannot be revoked;
2. The process of adoption through the Department, including how a family is selected for a child;
3. No promises or any assurances can be made about any contact by the parents with the child following adoption;
4. The rights of all legal parents and the need to terminate all parental rights either through voluntary relinquishment or legal proceedings;
5. The need for full medical and social background information on the child, the child's parents and other relatives;
6. The child's need for permanence, acceptance and stable family;
7. The parents' choice as to whether they want identifying information about them released to the relinquished child when the child reaches age 21;
8. The relinquishment process, including all forms and how they are completed and processed.
9. The need to determine if there is any Native American heritage.

In addition, the parents' feelings about themselves, their child and the relinquishment will be explored. If needed, parents will be referred to an appropriate community resource for help in dealing with issues identified.

The child's need and ability to be involved in the relinquishment counseling process will be assessed. At the appropriate point in the process, the worker will assure that the child is aware of the planned relinquishment and assure the child receives help in dealing with his/her feelings.

Special Circumstances Regarding a Native American Child:

In the case of a Native American child, in addition to all of the above, the relinquishment counseling will also include an explanation:

1. That the parents may withdraw their relinquishment for any reason at any time before the final adoption decree is entered;
2. That a relinquishment will not be taken unless the parents' intent is that it is final, in order to provide permanency to the child;
3. That the relinquishment must be executed before a judge of a court of competent jurisdiction. The relinquishment must be taken before the tribal court, if it has jurisdiction over the child, or before the county, district or juvenile court when they have jurisdiction;
4. That the judge of the court must sign a certificate that the terms and consequences of the relinquishment were fully explained, in detail, to each consenting party, and that each person understood the consequences of his/her signing;
5. That the court must also certify that each consenting party understood the explanation, and if that party's primary language is not English the details and consequences were interpreted into a language that person understands;
6. No consent for relinquishment can be given before or within ten days after the birth of a Native American Child.

Withdrawal of Relinquishment of a Native American Child

Policy: If parents of a Native American child chooses to withdraw their relinquishment before a decree of adoption, the relinquishment becomes invalid. Following receipt of a required written request to withdraw consent, the relinquishment is rescinded.

Relinquishment Requirements for All Cases

Policy: Once counseling has been provided, a determination will be made whether a relinquishment is in the best interest of the child and family. The worker will also determine whether the Department is the best agency to accept the relinquishment.

Because of the critical nature of the decision here, supportive consultation will be provided to the worker through Department adoption staff or team. Consultation of this nature will best insure consistency and quality service to families and children.

Rights of Fathers

Policy: For a child to be legally free for adoption, fathers who have legal rights must have their rights terminated either by voluntary relinquishment or court order. A man who claims to have legal rights to a child must generally meet one of the following conditions:

1. He is listed as father on the birth certificate;
2. He was married to the mother at the time of the child's birth or within ten months before the birth;
3. He has filed a claim of paternity with the Department during the pregnancy or within five days of the child's birth;
4. He has adopted the child legally;

5. He has been declared the father through judicial proceedings such as a divorce or paternity action; or
6. He has lived with the child or performed normal parental functions, for a legally significant period of time, holds himself out as the father, and otherwise acknowledges paternity.

Conditions For Completing A Relinquishment

A. A relinquishment must be given by:

1. Both parents.
2. Only one parent, if:
 - a. The other parent is deceased and proof of the death is available for the case record; or
 - b. The other parent's rights have been properly voluntarily relinquished or legally terminated, and a record of such is available for the case record; or
 - c. There is a plan in progress to properly deal with the other parent's rights; or
 - d. No legal paternity exists and the father hasn't lived with the child or performed parental functions, such as providing child support, and a "No Intent to Claim Paternity" certificate has been obtained to verify whether a claim has been made.
3. Parents who haven't been under the influence of alcohol or drugs including illegal substances, prescription or non-prescription mind-altering drugs within the past 24 hours.
4. A person or agency vested with the right to relinquish the child for adoption.
5. A person believed to be mentally and emotionally able to understand his/her legal rights and the consequences of relinquishment. If a legal guardian for the parent has been appointed by the court, the guardian's involvement and signature on the relinquishment are required. If no court action has been taken and staff have reservations about a parent's competency, then a relinquishment WILL NOT be taken until a report from a psychiatrist or psychologist is received that specifically indicates that the parent is competent to relinquish parental rights.

B. A relinquishment must be completed:

1. Without fraud. The worker discussing the relinquishment will fully inform the parents of the results of relinquishment and of signing the relinquishment form.
2. At the parents' choice. Relinquishments will not be taken if there is any reason to believe that pressure or threats have been applied to parents to relinquish their rights and that the decision to relinquish is not being made independently.
 - a. If a termination petition has been filed, the pending termination may be viewed as duress. In these cases, no relinquishment will be taken without involvement of the parents' attorney to assure that the parents' rights are protected. If parents desire to relinquish their parental rights following the filing of a petition to terminate parental rights, the relinquishment will be secured during a court hearing so the relinquishment is part of a court record.
 - b. No promises regarding the type of family, continued contact with child by parents or other family member, will be made to parents in securing the relinquishment.
3. With full information regarding options. Prior to taking a relinquishment, the parents will receive:
 - a. Information about possible programs, services and support systems that might enable them to parent the child.
 - b. Information about options in the community to provide relinquishment services or other services indicated.
4. In the child's best interest:
 - a. Adoption must be the preferred plan for the child;
 - b. Relinquishment will not be done to evade judicial proceedings or child support orders.

5. No less than 48 hours after the birth of the child in the case of newborn, unless the child is a Native American child and then no less than ten days after the birth of the child. (See Special Circumstances regarding a Native American Child, this section.)

Note: A relinquishment by a minor parent is legally valid.

Processing the Relinquishment

Policy: Once counseling has been completed and the protective service worker and parents determine that completing a voluntary relinquishment is in the best interest of the child and family, the worker and parents will fill out the required forms. If the case is involved with the juvenile or county court, the protective service worker will consult with the involved legal counsel and consideration will be given to having the relinquishment taken in court. If the child involved is a Native American child, the worker will notify the county attorney of the need to set the matter for hearing before the appropriate court.

The required forms will be completed as follows:

- *1.
 - a. The "Non-consent by the Biological Parent for Release of Information" is presented to and explained to the parents. They sign the form if they don't want information released to the relinquished child.
 - b. If "Non-consent" is not signed the signatures of the parents on the "Affidavit of Explanation of Non-consent". This form documents that the Non-consent form was explained to the parents. If a parent refuses to sign this affidavit, a relinquishment will not be processed.
- *2. Four originals of the "Relinquishment of Child by Parents" (form DSS-58) will be completed and signed by the parent(s) in the presence of a notary public. Originals are to be distributed as follows: one to court, if involved; one to parent; one in child's record and one to designated Adoption staff in the District.
- *3. The "Nebraska Adoption Medical History Form" with social and medical information obtained from the parents and extended family members.
- *4. Documentation of all discussion with parents and interested parties and all action taken regarding the relinquishment.

*Refer to Forms Section VIII

Notice of Acceptance of Relinquishment

Policy: Within two working days of receipt of the relinquishment, a adoption staff will review the forms and circumstances of the relinquishment and:

1. If one parent has relinquished but the rights of another legal parent remain intact, the Department will usually not accept the relinquishment until action is taken regarding the other parent's rights.
2. Send a letter accepting the relinquishment to the protective service worker, and the parent(s), if their address is known and the parent(s) attorney(s);
3. If the relinquishment cannot be accepted, the adoption staff will send a letter of non-acceptance to the parents and the protective service worker with a detailed explanation of why the relinquishment is not being accepted and a request that the parents immediately contact the protective service worker about the plan for the child.

SECTION V

TERMINATION OF PARENTAL RIGHTS

Policy: The Department will consider termination of parental rights action when:

- The court has made a determination that reasonable efforts to preserve or reunify the family are not required;
- A child has been in out-of-home placement 15 of the most recent 22 months (month is defined as calendar month);
- Parents have made no progress in meeting the goals of the case plan, or have made insufficient progress to adequately protect a child within a reasonable time, considering the age of the child;
- Adoption is the recommended plan of choice for a child;
- Severing parental ties is in the child's best interest; or
- An assessment shows there may be ground for termination of parental rights, even if the child has been in out-of-home care less than 15 of the most recent 22 months.

If the parents can be contacted, they will be advised of the decision. The possibility of a voluntary relinquishment by the parents will first be explored before court action is initiated.

Required Filing for Termination of Parental Rights

Federal and state statute require that the state file or join in the filing of a petition for termination of parental rights when a child has been in out-of-home care under the responsibility of the state when:

- (a) A child has been in foster care under the responsibility of the state for fifteen or more months of the most recent twenty-two months; or,
- (b) A court has determined the child to be an abandoned infant; or
- (c) A court has determined that the parent has:
 - (1) Committed murder of another child of the parent;
 - (2) Committed voluntary manslaughter of another child of the parent;
 - (3) Aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent; or
 - (4) Committed a felony assaulted that has resulted in serious bodily injury to the juvenile or another minor child of the parent.

Exceptions to required filing:

A termination petition is not required on behalf of the state, or the state is not required to join in the petition to terminate if:

- (a) The child is being care for by a relative;
- (b) The Department has documented in the case plan or permanency plan, available for court review, a *compelling reason to determine that filing would not be in the best interests of the child;
- (c) The family of the child has not had a reasonable opportunity to avail themselves of the services deemed necessary in the case plan or permanency plan approved by the court if reasonable efforts to preserve and reunify the family are required. (Those reasonable efforts would not be required if the court has determined that the parent has subjected the child to aggravated circumstances such as abandonment, torture, chronic abuse, or sexual abuse, or one of the circumstances in A, (a) through (c), above, apply.)

Under these circumstances, HHS can choose to recommend filing for termination, or can choose to recommend against termination. In considering that decision, the primary concern must be in the best interests of the child. For example, the statute specifically says that a filing isn't REQUIRED when a child is being care for by a relative. If that child's best interests would best be served via the legal permanency of adoption, the Department can and should take the stance that termination should occur. The reasons for that recommendation should be clearly documented in the case plan or permanency plan.

Additional reasons which might be *compelling reasons to recommend against a filing for termination include, but not limited to:

- (a) The child is over age 14 and unwilling to consent to adoption (NE statute requires that a child age 14 or older consent to his or her adoption in order for the adoption decree to be granted);
- (b) The child is unwilling to accept termination of parental rights, despite efforts to assist him or her with that acceptance, and a termination would be damaging to the child emotionally;
- (c) The child is adjudicated as a juvenile offender and is placed in a detention center or Youth Rehabilitation and Treatment Center due to law offense behavior;
- (d) The child is in a residential treatment center due to mental health needs; or
- (e) Maintaining the current placement is necessary for the child's well-being, the caregiver is unwilling to adopt, and the ongoing relationship with the legal parent is not detrimental to the child. Consideration should be given to the degree of permanence that this placement will provide, the caregiver's commitment to meet the child's needs on a lifelong basis, and the strength and nature of the child's attachments to the current caregiver, friends, school, community or legal family and whether those attachments could be maintained after adoption.

When a compelling reason not to file for or join in a filing for termination exists, the worker must be certain to document that reason in the case plan or permanency plan.

Situations that will be Considered for Termination of Parental Rights Action

In addition to required filings, the following are grounds for termination of parental rights and may result in a request for a filing to terminate parental rights:

1. The parents have abandoned the child for six months or more immediately before the filing of the petition;
2. The parents have substantially and continuously or repeatedly neglected refused to give the child or the sibling of the child necessary parental care and protection;
3. The parents, being financially able, have failed to provide the child with the necessary subsistence, education, or other care necessary for the child's health, morals, or welfare or have neglected to pay for such subsistence, education, or other care when legal custody of the child is lodged with others and such payment has been ordered by the court;
4. The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, and this conduct is found by the court to be seriously detrimental to the health, morals or well-being of the child;
5. The parents are unable to perform their parental responsibilities because of mental illness or mental deficiency, and there are reasonable grounds to believe that this condition will continue for a prolonged, indeterminate period;
6. Reasonable efforts to preserve and reunify the family under the direction of the court, have failed to correct the conditions leading to the dependency, neglect, or abuse of the child as previously determined by the court; or

7. The parent of the child has subjected the child to aggravated circumstances, including but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

Statutory Reference: Neb. Rev. Stat. 43-292

Seeking Judicial Termination of Parental Rights

When the worker determines that permanency may best be attained for a child through judicial termination of parental rights, the worker will consult with the guardian ad litem. After seeking the support of the guardian ad litem, the worker will request that the county attorney file a petition to terminate parental rights.

In cases of a Native American child, the worker will notify tribal authorities of the request.

Once a determination is made that termination of parental rights action should be pursued, a written request for this action will be sent to the county attorney. The request will include the relevant case information supporting the termination of parental rights action.

Involvement of Department Legal Staff

Policy: When the county attorney hasn't acted within 60 days of the written request for termination of parental rights action and following reasonable contacts by the protective service supervisory support staff, a Protection and Safety Legal Team member will be contacted to secure action on the termination of parental rights.

Specific Services to Parent, Child and Care Giver

The parents, the child as appropriate to her/his age, and the care giver of the child will each be provided with the following:

- The reasons the Department has recommended a termination of parental rights;
- An explanation of the process and services, including the services that will continue during the legal process; and
- Assistance in dealing with questions and feelings that arise during the process.

Services Following Termination of Parental Rights

When the court has ordered termination of parental rights, the worker will inform the child, the caregiver, and all pertinent professionals involved with the child along with all Department staff who serve the child. A certified copy of the court order terminating parental rights will be filed in the child's case record.

Casework support may be provided to the birth or legal family up to one month following termination to help the family through the transition. The worker will develop and facilitate a plan for closure based on the child's best interest.

Termination Appeal

Policy: If a termination order is appealed within 30 days, an adoptive placement agreement cannot be signed during the appeal, but a placement with the possibility of adoption should be considered. During the appeal process, ongoing contact or visitation with the parent will not occur unless ordered by the court or unless the worker determines that such contact is in the child's best interest.

Paternity Test for Filing of Termination Petition

The opinion of HHS is that HHS is not responsible for payment. Child welfare funds are not to be authorized for this purpose.

If testing is requested early in the case, with the intent that child support can be ordered, the case can be referred to child support enforcement, which has funding available to pay for testing. However, this resource is not available when the issue clearly is one of termination of parental rights.

If a court orders the Department of pay for paternity tests for purposes of terminating parental rights, the worker should immediately contact a Protection and Safety Legal Team attorney for assistance.

SECTION VI

ESTABLISHING A WORKING RELATIONSHIP WITH THE GUARDIAN AD LITEM

The worker will cooperate with the guardian ad litem in meeting the child's needs and acquiring permanency for the child. This includes, but is not limited to:

1. Providing information regarding the family and child, including:
 - a. Reasons the child came into the Department's custody and/or reasons the child is in care;
 - b. Name, address, and phone number of caregiver;
 - c. Visitation schedule;
 - d. Names, addresses, and phone numbers of others involved with the family or child, such as, school, therapist, homemakers;
 - e. Copies of the case plan, written service agreement, evaluations of child, and court reports; and
 - f. Name, address, and telephone number of the Native American tribe if the child is governed by the Indian Child Welfare Act;
2. Making the child's case file available for the guardian ad litem's review in the local or district office;
3. Being available as a consultant in decisions for and notice of any anticipated changes in:
 - a. Plan;
 - b. Goal;
 - c. Placement;
 - d. Visitation;
 - e. Major medical care anticipated or received; or
 - f. Recommendation for termination of parental rights, discharge, or case closure;
4. Providing notice of and invitation to case staffings;
5. Assisting in scheduling guardian ad litem visits with the child and opportunities for the guardian ad litem to observe parent/child visitation if she/he requests; and
6. Cooperating with the guardian ad litem in meeting the child's needs, documenting compliance with court-ordered services and achieving permanency for the child.

When termination of parental rights is planned and the county attorney has not acted on a request to file a motion to terminate, the worker will request that the guardian ad litem file the motion.

Request for Appointment

When a child is placed into the Department's custody by the court without appointment of a guardian ad litem, the worker will notify the court and request an appointment.

SECTION VII

CONFIDENTIALITY AND RELEASE OF INFORMATION PERTAINING TO THE COURT SYSTEM OR LEGAL PROCESS

Policy: All information regarding children and families the Department serves is confidential. This section assures children and families that their rights of privacy will be respected. Any time there is confusion about releasing information, staff will contact Legal Services Division for clarification. Information shared within the Department does not require any signed release.

Release of Information to Law Enforcement

Policy: All reports regarding abuse or neglect will be released to the appropriate law enforcement agency. The name and identity of the reporting party will be released to the investigating law enforcement agency and county attorney. When the Attorney General's Office is assessing a case for prosecution or preparing to prosecute a criminal case, the name of the reporting party will be released to them. If other information is requested regarding a child or family in non-abuse or non-neglect criminal situation or to apprehend a suspect, the worker or supervising will consult with the Department's Legal Services Division regarding release of the information.

Release of Information to Inter-Disciplinary Child Protection Teams (1184 Teams)

Policy:

- Child Abuse and Neglect Investigation Teams

All information relevant to the investigation of the child abuse and neglect report may be shared with this team without consent from the child or family.

- Treatment Team

The parent's written consent for release of information is not required but is recommended to assist with decision-making. The parent will be notified that the team is meeting and be given the opportunity to participate in the team meeting.

FOSTER CARE REVIEW BOARD INFORMATION REQUESTS

The Department is required by law to release certain information to the Foster Care Review Board. The local or district office having responsibility for the child's case will respond to requests for information from the Foster Care Review Board as long as the request is:

- On a case open in the local office where the request is made and the child is in out-of-home care;
- For the purpose of generating information concerning the tracking of foster children in Nebraska or periodically reviewing the case plans of children in out-of-home care; and in keeping with guidelines in 1-007.13B.

INFORMATION THAT WILL NOT BE RELEASED

Because of confidentiality laws, some information about a family will not be released to the FCRB. These items are:

- Records of the child's parents that are not related to the child welfare case, for example, ADC case information;
- CPS reports regarding a child who is not in out-of-home care;
- Law enforcement reports unless the FCRB obtains the authorization of the law enforcement agency;
- Reporter of child abuse and neglect; and
- Information contained in case file appendix. (See Case Management Guidebook for appendix definition.)

NOTE: The FCRB may review the CPS information of a sibling of a child who is out-of-home care.

See Case Management Guidebook for procedures.

Information Concerning Non-State Wards

Information about non-wards or their family will be released only when ordered the court.

Gathering and Releasing Information to County Attorneys for Court Action

Policy: The appropriate county attorneys will be given information about the child and family when this information is needed to carry out the function of the Department. If other information is requested regarding matters that are not the function of the Department, (for example, prosecution of a ward or criminal investigations) this information WILL NOT be released until the Department's Legal Services Division approves.

Release of Information Regarding State Wards

Policy: When a juvenile court petition has been filed on behalf of the child or a child is committed to the custody of the Department, information about the child and family may be released to the:

- Appropriate court;
- County attorneys;
- Court-appointed special advocates (CASA); and
- Guardians ad litem.

NOTE: Department records regarding placement of a Native American child must be made available at any time upon request of the Secretary of the Interior or the Native American child's tribe.

Information Released to Parents and Parents' Attorneys

Policy:

- The family or child's case file may NOT be released to parents or their attorney;
- Information regarding the family or child may be released to the parents' attorney when the parents have approved the release of information.

NOTE: When parents are represented by separate counsel, are unmarried, divorced, separated, or have opposing interests, only information regarding the specific parents may be released to their attorneys.

- Parents and parents attorneys may obtain information orally or in written reports prepared by the worker.

General Guidelines: Responding to a Subpoena Requesting Confidential Child Protective Service Record Information

Introduction

What follows is a general discussion of subpoenas, along with general guidelines for Protective Service staff to follow if served with a subpoena directing them to appear to testify either in court or at a deposition. Please note that this discussion and these guidelines apply only to those situations where the information being requested/subpoenaed is confidential CPS record information.

I. SUBPOENA: GENERAL DISCUSSION

- A. Statutory Bases: Neb. Rev. Stat. 25-1223 et seq. for juvenile court, also see Neb. Rev. Stat. 43-262 to 43-270.
- B. Issued By: Usually court clerk, judge or in the case of a deposition, by a court reporter.
- C. Two types:
 - 1. Subpoena: A subpoena is a command to a person to appear at a certain time and place to give testimony upon a certain matter.
 - 2. Subpoena duces tecum: A subpoena duces tecum requires production of certain specific books, papers, writings, documents, and/or other items, which documents and items are in the custody and control of the person or agency served with the subpoena.
- D. When issued: When litigation/petition/case pending before a court.
- E. Types of proceedings: For Child Protective Services staff, subpoena usually issued to have staff (1) appear/testify in juvenile/county/ district court, or (2) to appear and give testimony at a deposition.
- F. Penalty for Failing to Comply: If a subpoena is properly issued and served on person/agency pursuant to statutory authority and that person/agency, without reasonable cause, fails to appear and abide by the order of the court or officer requiring his/her attendance or testimony, that person may be punished as contempt of the court/officer (see Neb. Rev. Stat. 25-1229 through 25-1232; also see Neb. Rev. Stat. 43-269 and 43-270).

II. CHILD PROTECTIVE SERVICES RECORD INFORMATION

The Department of Social Services has a general rule of non-disclosure of information in its files. A subpoena can only be issued and used to obtain information the requesting party is legally authorized to obtain. For this reason, the confidentiality statutes which govern the Department's release of CPS record information come into play. It is important to remember that a subpoena does not necessarily constitute a court order which would authorize the Department to release this information.

A. Confidentiality:

All records of the Department of Social Services concerning reports of abuse/neglect of children, and any records generated as a result of such reports, are confidential and cannot be released by the Department of Social Services to anyone else (see Neb. Rev. Stat. 43-725) unless:

1. Court-ordered to do so (see Neb. Rev. Stat. 28-719); or
2. Person requesting confidential information has legal access to the information (see Neb. Rev. Stat. 28-726), to wit:
 - a. Any law enforcement agency investigating a report of known or suspected abuse or neglect;
 - b. A county attorney in preparation of abuse, neglect, or termination petition;
 - c. A physician who has before him/her a suspected victim of child abuse/neglect;
 - d. The agency/guardian having legal responsibility of a child who is the subject of an abuse/neglect report; and
 - e. A bona fide researcher; or
3. Disclosure is required in order for the Department of Social Services to comply with the purpose of the child abuse/neglect reporting law and its other statutory duties (i.e., protection of children). This policy statement has very limited application and shouldn't be used to authorize disclosure in each and every case.

Note: Even if any one or all of these exceptions apply, the Department of Social Services usually cannot disclose the name and address of a reporting party or one who cooperated in a subsequent investigation unless the reporting party agrees to the disclosure or the Department is specifically ordered by the court to make this disclosure (see Neb. Rev. Stat. 28-719 and 28-722).

B. Penalty:

Any person who knowingly releases confidential CPS record information in a manner other than as authorized by statute shall be guilty of a Class III misdemeanor.

III. GENERAL GUIDELINES:

- A. Subpoena to Appear at DEPOSITION Outside of Court: A "deposition is defined as the court authorized taking of testimony of a witness upon oral question or written interrogatories, but not in open court testimony which is reduced to writing and properly authenticated, the purpose of which is to prepare for and/or use in trial of a civil action or criminal prosecution.

Carefully review the subpoena with the following questions in mind.

1. Does the information/testimony being requested concern CPS record information?
 - If yes, this information/testimony is confidential and cannot be disclosed unless the Department is court-ordered or otherwise authorized to disclose this information (see discussion under "Confidentiality").
 - If not, check to see if this information is available, to the public or if other confidentiality/disclosure guidelines apply.
- B. Assuming this involves CPS record information, and the requesting party is not authorized by law to receive this information (pursuant to Neb. Rev. Stat. 43-276), next check to see if the subpoena is signed/issued by a judge/magistrate.
 - If yes, this constitutes a valid court order and the Department can disclose only that information/documents specifically identified in the subpoena, can disclose only to those identified in the order as rightfully entitled to this information, and must be disclosed under whatever conditions outlined by the court. Once, again, the name and address of any reporting party usually cannot be disclosed by the Department unless and until a court of competent jurisdiction specifically directs the Department to make such additional disclosure. An order which does not specify this disclosure is insufficient.
 - If not, immediately contact the attorney/party which requested issuance of the subpoena to advise him/her that the CPS record information is confidential by law (it may be helpful to cite Neb. Rev. Stat. 43-719, 43-725 and 43-726) and that the Department cannot disclose this information unless court-ordered to do so. Our experience has been that normally in such a case, the requesting attorney/party will obtain a necessary court order before the deposition or will cancel the deposition until such time as an order can be obtained. However, if the attorney/party insists on going forward without a court order, you must still comply with the subpoena by appearing at the time and place identified in the subpoena and, if a subpoena duces tecum has been issued, by taking the CPS case records with you to the deposition. Once there, however, and in the absence of a court, a worker is limited in what she/he can testify to.

A worker CAN:

- Give his/her name;
- Indicate a CPS investigation was/was not done; and
- Testify to his/her observations unrelated to the CPS investigation that was done.

A worker CANNOT:

- Give details as to the CPS investigation itself;
- Show or testify from the CPS investigative file; or
- Otherwise disclose/discuss any other confidential CPS record information.

Suggested response:

If a worker is asked questions which seek CPS record information considered confidential and which falls outside the permissible areas of inquiry identified above, the worker should indicate that: "The question you ask deals with CPS record information which is confidential by State law (cite Neb. Rev. Stat. 28-719, 28-725 and 28-726) and, based on the advice of legal counsel, I am not authorized to disclose that information or answer that question unless directed to do so by court order."

C. Subpoena for IN-COURT Testimony

The general guidelines which apply to subpoenas issued to appear in court differ depending upon the specific court where the testimony is to be given.

1. If in Juvenile Court:

A worker can generally testify as to the details of the CPS investigation and/or other CPS record information if in a juvenile court proceeding dealing with the subject(s) of the investigation/records being requested or inquired into. This type of limited disclosure is expected/authorized so as to allow the juvenile court, the Department of Social Services, guardian ad litem, and/or all other parties to take appropriate action with respect to a child and his/her family based on all available information relevant to the determination which must be made.

2. Outside Juvenile Court:

With increasing frequency, Department staff are being called to testify in district court (i.e., for divorce cases) and criminal court actions. Again, unless a court orders disclosure of information which is of confidential CPS record information, Department staff must comply with any subpoena issued and appear in court as directed but cannot disclose confidential CPS record information without receiving a specific court order to do so. The same parameters of disclosure and advice given earlier in the discussion about depositions apply here, the difference here being that a judge will actually be present at the court hearing and can verbally order the worker to answer the questions and/or otherwise disclose this confidential information.

IV. CONCLUSION

Keep in mind that these are only guidelines to be followed in these types of cases when a subpoena has been received. Any case-specific questions which appear to be beyond the scope of these guidelines should still be referred to the Legal Services Division. There are instances where a Protective Order may need to be sought or other action taken.

SECTION IX

COURT AND LEGAL TERMS AND DEFINITIONS

ABANDONMENT -- A parent(s) or guardian(s) act of leaving a child without adequate care, supervision, support or parental contact for an excessive period of time(six months); an express or implied intention to sever the parent-child relationship and avoid the obligations of the relationship.

ACTIVE EFFORTS -- Active efforts requirement for Native American children requires an inquiry into the preventive services provided by the Department in addition to the reasonable efforts requirement but it is generally seen as a higher standard of service than "reasonable efforts." This includes services to Native American families which involve the Native American child's tribe, extended family, Native American professionals, and off-reservation Native American organizations, where applicable.

ADJUDICATION -- The process of rendering a judicial decision as to whether the facts alleged in a petition or other pleading are true. An adjudicatory hearing is that court proceeding in which it is determined whether the allegations of the petition are supported by legally admissible evidence; also called "jurisdictional" or "evidentiary" hearing.

ADMINISTRATIVE DISCHARGE -- Termination of Department wardship by the Department rather than through court order.

ADMISSIBLE EVIDENCE -- Evidence which can legally and properly be used in court.

ADMISSION --

1. A statement tending to establish the guilt of the person making the statement.
2. The transfer of a minor's physical custody to a detention or shelter facility.

ADOPTION -- The method provided by law to establish the legal relationship of parent and child who are not so related by birth, with the same mutual rights and obligations that exist between children and their birth parents.

ADULT -- A person 19 years or older, for purposes other than drinking which is then age 21.

AFFIDAVIT -- A written statement of facts signed under penalty of perjury, often before a court clerk or notary public who administers the oath to the signing party, who is called the affiant or declarant. Affidavits are routinely required for the procurement of warrants and are used in some jurisdictions to initiate juvenile court proceedings. They may be admitted into evidence.

AGE OF MAJORITY -- Age at which, by statute, an individual is considered an adult and responsible for his/her own care, support, and actions. In Nebraska, an individual reaches the age of majority upon his/her 19th birthday.

ALLEGATION -- A charge or claim of fact set forth in a petition or other pleading which must be proven if the petition or other pleading is to be found true.

APPEAL -- Petition to a higher court urging that it overturn the decision of a lower court. Appellate (higher) Courts normally review questions of law on appeal, not determinations of fact. The review is conducted upon the record of the lower tribunal's proceedings. Sometimes the term appeal is used in a technical sense to refer to upper court review which is under- taken as a matter of right, as opposed to review granted on a discretionary basis. More commonly, however, the term refers to any upper court review.

APPELLANT -- The party who initiates an appeal.

APPELLEE -- The party against whom an appeal is taken; also called the respondent.

APPENDIX -- The collection of non-case record information, including copies of correspondence between field staff and the Department's Legal Division, the Attorney General, or the county attorney for purposes of consultation, or information regarding consultation provided. This information is subject to attorney-client privilege. The appendix is not provided if the case record is subpoenaed.

APPROVAL STUDY -- Document which includes results of a home visit, a Child Protective Services check, a law enforcement check, and responses from references, and either approves or disapproves a family placement of a child or children. Approval studies are generally used for persons already known to the child and may be for relative or non-relative homes.

ARRAIGNMENT -- The process of advising an individual of the petition filed in his/her interest and allowing him/her to state his/her answer to the charge (i.e., admission or request for adjudication in delinquency or criminal cases).

BATTERED CHILD SYNDROME (B.C.S.) -- Physical condition of a child indicating that external or internal injuries result from acts committed by a parent or custodian. Also termed Parent Infant Trauma Syndrome (P.I.T.S.).

BURDEN OF PROOF -- The duty to establish a claim or allegation by admissible and credible evidence at the time of hearing. This is usually the duty of the state; it is up to the state to prove its case with respect to a minor or parent, and it is not the minor's or parents' duty to explain or disprove unproven allegations.

CAPIAS -- A class of writs that authorize a court or law enforcement officer to take the party named and keep him/her safely so that he/she may have his/her body before the court on a certain date. The capias authorizes an individual to take a youth into custody pending further court proceedings.

CASA -- Court Appointed Special Advocate. Generally a lay volunteer appointed by the court to assist in representing the child's interest in a juvenile court proceeding.

CASE FILE -- All volumes of the case record and appendix for a specific case.

CASE PLAN -- Document which sets forth the goals for the family/child and establishes the basis and direction for all efforts and actions taken by the Department. A case plan must include: reasons for which the case was opened (e.g., why the child was removed from home); services provided to the family; progress which has occurred; remaining problems; actions to be taken to eliminate the problems, and timelines.

CASE RECORD -- The official collection of information and documents regarding a specific case served by the Department. It does not include copies of correspondence between field staff and the Department's Legal Division, the Attorney General, or the county attorney for purposes of consultation, or information regarding consultation provided.

CERTIFICATION -- Generally used to refer to the process of transferring a minor's case from the adult court to the juvenile court for trial.

CHILD -- A person less than 19 years of age.

CIVIL PROCEEDING -- Also called a "civil action," includes all lawsuits other than criminal prosecutions. Juvenile and Family Court cases are civil proceedings. See STANDARD OF PROOF.

COMMISSIONER -- See HEARING OFFICER.

COMMITMENT -- The order which directs an officer to take a person to jail, prison, Youth Development Center, or Department of Social Services.

COMMITMENT DATE -- Date on which a child is made a Department ward via court order or voluntary relinquishment.

COMMON LAW -- Law developed as the result of judicial decisions rather than by legislative enactments.

COMPETENCY -- In the law of evidence, a witness' ability to observe, recall and recount under oath what happened.

CONTEMPT -- A willful disregard of a court, judge, or legislative body; disobedience of their lawful direction.

CONTINUANCE -- Term used by the court at the time it adjourns a hearing and orders a subsequent hearing to be held to hear additional evidence to review the case or an extension of time grant to an attorney by motioning the court for a continuance and has good cause.

COUNSEL -- A lawyer, legal advisor. An individual authorized by the state to practice law within the state boundaries.

COURTESY SUPERVISION -- Provision of casework services by a protective service worker who isn't the case manager, or an agency which doesn't have custody of the child. Provision of such services doesn't require that the agency have legal guardianship.

CRIMINAL COURT -- In Nebraska divided into district court (which handles felony cases) and county court (which handles misdemeanors and the beginning stages of most felony cases).

CUSTODY -- The right to or responsibility for a child's care and control, carrying with it the duty of providing food, shelter, medical care, education and discipline.

CUSTODY OR DETENTION HEARING -- Court hearing, usually held after the filing of a petition, to determine whether a minor should be placed away from a parent until a full trial on any neglect, abuse, or delinquency allegations can be held.

CUSTODY STUDY -- Document which includes results of a given number of interviews, a CPS check, a law enforcement check, and responses from references, and either recommends for or against placement of a specific child with a particular family.

DELINQUENCY -- The commission of an illegal act by a juvenile. Increasingly used to refer only to those acts which would be crimes if committed by an adult, but state laws vary in their definitions.

DEPENDENCY -- The lack in a minor's life of proper parental care, or support through not fault of the parents.

DETENTION ORDER -- Court action which places a child temporarily in the custody of another custodian which may include the Department and into out-of- home care pending a court hearing because of alleged danger to the child. When authorized by the court to do so, a probation officer may sign a detention order.

DISCHARGE -- Termination of Department guardianship or custody of a child.

DISCOVERY -- The system of pretrial or prehearing which enables the parties involved in a court proceeding to find out about the positions taken by the other parties and the facts which those parties believe support their positions.

DISMISSALS WITH PREJUDICE -- No subsequent prosecution of a case possible.

DISMISSALS WITHOUT PREJUDICE -- Refiling of a case possible.

DISPOSITION -- The order of a Juvenile which determines a treatment plan for a child. The main issue is usually whether the child should continue in or return to the parental home (and under what kind of supervision), to whether the minor should be placed out-of-home (and in what kind of setting; a relative's home, foster home, or an institution), and to establish a plan of rehabilitation.

DISPOSITIONAL HEARING -- A hearing for the purpose of determining what shall be done with or by a child and/or parents who have been adjudicated within the juvenile court's jurisdictions. A dispositional hearing is the time the juvenile court judge will order implementation of a treatment plan.

DIVERSION -- Procedures for handling relatively minor juvenile problems informally, without referral to the juvenile court.

DOMESTIC RELATION COURT -- A district court in which divorces and divorce custody hearings are held.

DUE PROCESS -- The constitutionally-guaranteed right of person(s) to be treated by the law with fundamental fairness. In juvenile proceedings these generally include the right to adequate notice in advance of the hearing, the right to counsel, the right to confront and cross-examine witnesses, the right to have allegations of conduct that would be criminal if committed by an adult proven beyond a reasonable doubt.

EMANCIPATION -- Legal term used to describe a condition whereby the child may be released from all of the restraints of childhood and receive the duties, privileges and responsibilities of adulthood. There are no emancipation laws currently in existence in the State of Nebraska.

EQUITY -- Historically, a system of remedial jurisprudence which grew up separate and distinct from the common law and was not bound by its writs and precedents, so that it could accomplish just relief where the common law could not. The legal system's exercise of jurisdiction over families is founded on principles of equity.

EVIDENCE -- Any sort of proof submitted to a court for the purpose of influencing the court's decision. Some special kinds of evidence are:

1. Circumstantial evidence: Proof of circumstances which may imply another fact. For instance, proof that a parent kept a broken appliance cord may connect the parent to infliction of unique marks on a child's body. A neighbor's testimony that he saw the adolescent strike his parent on four separate occasions causing bruises would be EVIDENCE tending to prove the adolescent was incorrigible. See also RES IOSA LOQUITUR.
2. Hearsay evidence: Testimony about an out-of-court statement made by someone other than the person testifying, and introduced into evidence in order to prove the truth of the matter asserted by that other person. For example, "I heard him say that the child had been left alone for ten hours." Such a statement would not normally be permissible to prove the fact that the child had been left alone for ten hours. Instead, it would be necessary for the person who actually made the statement to testify personally in the case so, at least, the opposing attorney would be able to cross-examine and "test" the truth and/or accuracy of that statement. There are numerous exceptions to the Hearsay Rule, however. For example, admissions of confessions made by a parent in a child abuse and neglect case may be testified to by a witness who heard the statement.

3. Opinion evidence: Although witnesses are ordinarily not permitted to testify to their beliefs or opinions (being restricted, instead, to reporting what they actually saw or heard), when witnesses can be qualified as experts on a given subject, they can report their conclusions. Lawyers are also allowed to ask qualified experts "hypothetical questions," in which the witness is asked to assume the truth of certain facts, and express an opinion based on those "facts."
4. Physical evidence, or Real evidence: Any tangible proof, such as a document, X-ray print, photograph of scars or bruises, or drug paraphernalia.

EXCHANGE OF INFORMATION IN ADOPTION -- Sharing of information about the child's growth and progress by the adoptive family with a birth relative after the final decree of adoption. Generally, this sharing occurs through the agency, without name and address of the adoptive family being provided to the birth relative.

EXPERT WITNESS -- An individual who has more knowledge in a certain field than the average person. This person should have gained his/her knowledge through education and/or experience, and can give an opinion based upon that knowledge.

EX PARTE -- "One side only." In a judicial proceeding action is taken ex parte when only one side of the controversy seeks judicial action without giving notice to the opposing party or giving him or her an opportunity to contest the matter. Generally, ex parte proceedings are only proper in an emergency.

EXPUNGEMENT -- The destruction or sealing of records of minors or adults after the passage of a specified period of time or when the person reaches a specified age and has not committed another offense. Sometimes provided for by statute and sometimes ordered by the court under its inherent powers. THIS TERM IS NOT USED IN NEBRASKA BY THE COURTS.

EXTRAORDINARY WRIT -- A writ, often used by an appellate court, making available remedies not regularly within the powers of lower courts. They include writs of habeas corpus, mandamus, prohibition and quo warranto. Sometimes called "Prerogative Writs."

FAILURE TO THRIVE SYNDROME (F.T.T.) -- A serious medical condition in which a child's weight and motor development are significantly below average for his/her age. Usually, though not invariably, found in children less than one year old, the syndrome may have an organic cause or it may be caused by severe emotional or physical neglect.

FAMILY COURT -- A civil court in some states which combines the functions of domestic relations, juvenile court and probate court.

FELONY -- A serious crime, generally punishable by imprisonment in a state or federal penitentiary.

FIFTH AMENDMENT -- The Fifth Amendment to the U.S. Constitution, guaranteeing that a person cannot be compelled to present self-incriminating testimony in a criminal or juvenile proceeding.

FITNESS HEARING -- A hearing held in juvenile court to determine the fitness of a minor for retention in juvenile court and the minor's amenability to juvenile court resources. Must be held before any evidence is heard on the petition, a prerequisite to the transferring of a minor's case to adult court. Also called "certification hearing," "remand hearing," "transfer hearing," or "waiver hearing," depending upon local practice. THIS IS NOT APPLICABLE IN NEBRASKA.

FOS-ADOPT -- Type of placement for a child likely to be freed for adoption in which the foster family makes a commitment to keep the child until his/her return home or until adoption by the foster family can occur.

FOSTER CARE -- Care provided to children outside of their parents' home. It includes placement with relatives, foster families, group homes, child caring agencies, and other programs providing care for children under the age of 19.

FOURTEENTH AMENDMENT -- The Fourteenth Amendment to the U.S. Constitution, securing to every person due process rights to life, liberty and property when they are being dealt with under state law.

GROUP CARE -- A facility licensed not as a foster family home, but as a group home, a center for the developmentally disabled, or a drug or alcohol treatment center or with a comparable designation and which provides residential child care for 12 or fewer children in out of home care.

GUARDIAN -- A guardian is one who is entitled to the custody of the person or a minor. A guardian is a person upon whom the law imposes the duty of looking after the pecuniary interests of his ward. A guardian of a minor is one who legally has the care and management of a person or the estate of a child during his minority. The term "guardian" without wards limitation describes one who is charged with the care, custody, property, and person of the ward.

GUARDIAN AD LITEM -- An adult appointed by the court to act in the minor's behalf in a lawsuit and protect the child's best interests in court. (Ad Litem because minors lack the legal capacity to sue or defend against suit.) In Nebraska, the guardian ad litem need not be an attorney.

GUARDIANSHIP -- The duty and authority of a designated person to make important decisions with respect to a minor in matters having a permanent effect on the minor's life and development concerning his/her general welfare. It includes, but is not necessarily limited to, enlistment in the Armed Forces of the United States and to major medical, psychiatric and surgical treatment to represent the minor legal actions, and to make other decisions of substantial legal significance concerning the child.

HABEAS CORPUS -- A phrase meaning "having the body." It describes a proceeding by which a writ is issued to someone having custody of a person ordering him/her to bring the prisoner to court to determine if he/she is being unlawfully detained.

HEARING -- A trial or other proceeding before a judicial officer, judge, referee, commissioner, master, magistrate, or chancellor depending upon the local jurisdiction or an administrative agency.

HEARING DE NOVO -- A full new hearing or trial as opposed to review on a transcript or record.

HEARING OFFICER -- The individual who presides at a judicial proceeding. The role of Judge is performed in some Juvenile Court hearings by Referees, Commissioners or Masters, whose Orders are made in the name of the supervising Judge. The orders of a Referee or Commissioner may be rescinded by the supervising judge after the judge has conducted a rehearing in the case.

HOME STUDY -- Document which includes results of a given number of interviews, a CPS check, a law enforcement check, and responses from references, and either approves or disapproves a family for placement of a child(ren) for foster care and/or adoption.

IV-E -- That title of the Social Security Act which authorizes payment of federal money for children who would have been eligible for payments if they had remained in an ADC unit who are eligible for federal adoption subsidy payments, or foster care maintenance payments.

IN CAMERA -- Lit., "In chambers," a hearing or judicial proceeding conducted in chambers or privately.

INDIAN CHILD WELFARE ACT -- Federal and state laws and regulations which, in addition to all other federal and state child welfare laws, govern service delivery, family preservation, and child custody proceedings of eligible Indian children and families.

IN LOCO PARENTIS, LIT. -- "In the place of the parent" refers to actions of a custodian, guardian, or other person acting in the parents' place and stead.

JUDGEMENT -- The official and authentic decision of a Court of Justice.

JURISDICTION -- The legal authority of a court to hear a case or conduct other proceedings. Power of a court over person and subject matter. Three general areas are relevant in determining whether a court has jurisdiction in a particular case:

1. Subject matter of the case (e.g., criminal prosecution, divorce, child protection) and specific person(s) involved;
2. Territorial limitations of the court (e.g., where the parties/defendants reside, where criminal acts occurred); and
3. The procedures used to notify the defendants that a case has been filed (e.g., was service of summons properly made.)

JURY -- A group of adults, selected by lawyers or the judge from a panel, to judge the truth of allegations made in a legal proceedings. Trial by jury is available in criminal cases, but very few states convene juries in juvenile court, probate court or divorce court cases. Those cases are, "court cases" in which the truth of allegations is determined by the judge who presides.

JUVENILE COURT -- The court has jurisdiction (legal power) over minors only, usually handling cases of suspected delinquency, status offenses, (e.g., runaways, children in need of supervision), and cases of suspected abuse or neglect. In many states, terminations of parental rights occur in juvenile court proceedings, while in other states such cases must be brought before another branch of the civil courts.

LARCENY -- The wrongful taking or stealing away property of another; theft.

LAW ENFORCEMENT PICKUP -- Removal of a child from his/her home or parent for the protection of the child and delegation of custody to the Department by a law enforcement official for up to 48 hours without a court order.

LEADING QUESTION -- Questions which imply a response and require only a "yes" or "no" answer.

LEAST RESTRICTIVE -- Term which implies to placement of a child in a setting which is the most comparable to his/her home. In order of least to most restrictive, placements are with:

1. Parent(s) or, if appropriate, independent living;
2. Other relatives;
3. Friends (persons known or familiar to the child);
4. Foster parent(s);
5. Group homes;
6. Child placing agencies;

7. Child caring institutions;
8. Hospitals, and
9. Inpatient residential treatment centers.

The choice of level of restrictiveness must take into consideration the needs and abilities of the child, family circumstances, and risk assessment when appropriate. The choice of level must be consistent with the best interest and special needs of the child.

LEGAL CUSTODY -- A status created by the natural biological rights of parents or by court order embodying the following rights and responsibilities: the right to have physical possession of the child; the right and duty to protect, train and discipline the child; responsibility to provide the child with food, shelter, education, and ordinary medical care provided that such rights and responsibilities will be exercised subject to the powers, rights, duties and responsibilities of the guardian of the person and subject to residual parental rights and responsibilities if these have not been terminated by judicial decree.

LEGAL IMMUNITY -- Legal protection from liability such as the protection given to the reporting parties under child abuse reporting statutes.

LONG TERM FOSTER CARE AS A PERMANENCY OBJECTIVE -- Living arrangement in which a child remains in Department custody but with the same foster family until age of majority or emancipation. Parental rights remain intact, but foster parents assume the primary parenting role.

MALICE -- The intentional commission of a wrongful act without legal justification with the intent of inflicting injury or harm, or under circumstances such that the person acting should reasonably have known the injury or harm would result.

MANDAMUS -- Lit., "We order," and extraordinary writ issued by a higher court and directed to a public executive or administrative officer or agency, or the judge of a lower court, commanding the performance of a specified act. Also known as "Writ of Mandate."

MATERIAL -- Evidence that relates to a substantive part or element of a case.

MINIMUM ADEQUATE CARE, MINIMUM PARENTING STANDARDS, OR MINIMUM SUFFICIENT LEVEL Considering ethnic and cultural differences, an action whereby a parent/parent substitute or caretaker ensures that the child is adequately fed, clothed appropriately for the weather conditions, provided with adequate shelter, protected from severe physical, mental, and emotional harm, and provided with necessary medical care as required by law. A parent/parent substitute or caretaker may have personal and situational problems but meet minimum parenting standards.

MIRANDA RULE -- From the U.S. Supreme Court case of *Miranda v. Arizona*, 384 U.S. 436 (1966), the rule that confessions are inadmissible at trial if the police do not advise the subject of certain rights before questioning him/her. The rights of which the subject must be advised include:

1. The right to remain silent and to refuse to answer any questions;
2. The right to know that anything he/she says can and will be used against him/her in a court of law;
3. The right to consult with an attorney and to have an attorney present during questioning;
4. The right to have counsel appointed at public expense, prior to any questioning if the subject cannot afford counsel.

Though the U.S. Supreme Court has not ruled directly on the question, good practice and the laws of many states require that the warnings be given in juvenile cases. Moreover, some

states have required that a minor be advised of the right to have a parent, relative, or other advisor present during questioning, in addition to counsel.

MISDEMEANOR -- A crime less serious than a felony, usually punishable by a fine or incarceration in a city or county jail but not a state penitentiary.

MITTIMUS -- The prisoner is sent, not by virtue of the warrant of commitment, but on account of the judgement and sentence of the court. Mittimus after conviction is a final process for carrying the judgement of the court into effect.

MOTION -- An application made to a court for an order.

MOVING PARTY -- The party who initiates a lawsuit or other judicial proceeding. In juvenile court this is usually the prosecuting attorney who files the petition.

NEGLIGENCE -- Failure to exercise the care than an ordinarily prudent person would exercise in the same circumstances.

NOLO CONTENDERE -- "I will not contest." Nolo contendere is not an admission of guilt, but a willingness to accept a declaration of guilt rather than go to trial. It is treated as a guilty plea by the court but does not serve the same purpose as admitting guilt. If a subsequent civil suit arises, the plea of nolo contendere is not admissible as evidence against the defendant.

NON-RELATIVE -- Person not considered a relative as defined in this policy.

NOTICE -- Notice implies knowledge acquired by some person standing law for himself/herself or for others and presumed to be capable of handling his/her own affairs. Notice is what imparts information of the fact to one to be notified, divided into actual, constructive and implied notice.

NUN PRO TUNC -- Now for then. A tardy act made retroactive so as to take effect as of the time when it should have been done.

OATH -- A solemn appeal to the Supreme Being in attestation of the truth of a statement. An oath is given before each witness testifies.

OBJECTION -- If a party believes that any question or tactic by the examining attorney is improper, that party may "object." When an objection is made, the judge may rule immediately by sustaining or overruling the objection, or the judge may ask the examiner why the objection should be overruled. If the judge agrees with the objecting party that the question is improper under law, then the judge will sustain the objection and the witness may not answer the question.

OPEN ADOPTION -- Arrangement which is legally enforceable, by which a birth relative maintains contact with the adoptive family, including the child, after the adoption decree.

OPINION EVIDENCE -- Witnesses are normally required to confine their testimony to statements of fact and are not allowed to give their opinions in court. However, if a witness is qualified as an expert in a particular field, he/she will be allowed to state his/her opinion as an expert based on certain facts.

ORDER -- A written or verbal direction of the court.

ORDINANCE -- A law enacted by the governing body of a city or county.

PERMANENCY OBJECTIVE -- Anticipated result of all efforts and services, which will result in permanency for the child or his/her discharge from Department custody.

PETITION -- Document filed in juvenile or county court at the beginning of a dependency, neglect, abuse, or delinquency case. It sets forth the allegations which, if true, form the basis for court intervention. It forms the basis for court jurisdiction and intervention.

PETITIONER -- In Juvenile or Family Court practice, the agency or individual who files the petition. Depending upon state law or county practice, most child welfare petitions are filed by child protective services workers, foster care workers, the county prosecutor or the juvenile court probation department.

PHYSICAL CUSTODY -- Different from, and should be distinguished from legal custody. Foster parents with whom an agency places child or children are the physical custodians. The agency, however, has legal custody of the child or children and the authority to move the child or children if this is indicated.

PHYSICAL EVIDENCE -- Any tangible piece of proof (document, x-ray, weapon, etc.). Also called "real" evidence.

PLAINTIFF -- The name given the person who brings an action or files a civil suit.

PLEA BARGAINING -- Negotiation of an agreement between prosecuting and defending counsel, often with the agreement of the court, to have the accused plead guilty to certain reduced charges in return for the dismissal of others.

PLEADING -- Any one of the formal written statements of accusation or defense in an action at law.

PREDISPOSITION INVESTIGATION -- An investigation undertaken by a probation agency or other designated authority at the request of a juvenile court, into the past behavior, family background and personality of a juvenile who has been adjudicated a delinquent, a status offender, or a dependent, in order to assist the court in determining the most appropriate disposition.

PRIMA FACIE -- Lit., "On the first appearance," evidence which on its fact makes out the necessary elements of the allegation, and which will suffice to establish that allegation as true until it is contradicted and overcome by other evidence.

PRIVILEGED COMMUNICATIONS -- Confidential communications to certain persons that are protected by law against forced disclosure. Privileged communications cannot be disclosed in court over the objection of the holder of the privilege. (The holder of the privilege is usually the patient, client, or other person receiving care, rather than the provider of that care.) Communications between lawyer and client, physician and patient, psychotherapist and patient, priest minister or rabbi and penitent, are typically privileged. Some social workers are also covered by privilege in some states, but the law varies widely from state to state as to the classes of persons to whom the communications are privileged; who may invoke the privilege; and similar matters. Generally, the privilege only protects the communication from disclosure in court or in connection within a court case.

PROBATE COURT -- The court which handles cases of Guardianship, adoption, and estates of deceased persons.

PROBATION -- In adult or juvenile court, a disposition which allows the defendant or the minor to remain at liberty under the supervision of a probation officer, frequently with a suspended commitment or sentence of imprisonment and usually requiring compliance with certain stated conditions.

PROTECTIVE CUSTODY -- In child abuse and neglect cases, the emergency removal of a child from his/her home when the child would be in imminent danger if allowed to remain with parent(s) or custodian(s).

PUTATIVE -- Reputed or supposed, usually used in reference to the unwed father of a child.

QUO WARRANTO -- Lit., "By what authority...?" an extraordinary writ usually issued by a higher court to prevent continued assertion of unlawful authority by a public officer.

REASONABLE EFFORTS -- The exercise of reasonable diligence and care by the Department, assuming the availability of reasonable services to meet the needs of the child and family.

RECIDIVIST -- A repeat offender.

REHEARING -- In some states, an order by a referee or commissioner may be reviewed by the presiding judge of the juvenile court if the minor or parents so request. If there is no transcript of the original hearing, the review will commonly have to take the form of a new hearing (hearing de novo), which is called a rehearing. If the first hearing was recorded and a transcript exists, the review may be made on the transcript and the court may order a rehearing at its discretion. The term is also used when a matter is reconsidered by the judicial officer who first heard it for the purpose of modifying and order or disposition.

R.R.S. -- Reissue Revised Statutes, also known as Nebraska Revised Statutes.

RELATIVE -- Person connected to the child by consanguinity (blood) marriage, or adoption. A person related through legal guardianship shall be deemed to be a relative for the purpose of this policy. For Native American children, relative shall be defined either by the law or custom of the tribe.

RELEVANT -- Evidence that is logically connected to and helps to prove a material point or issue in a case.

RELINQUISHMENT COUNSELING -- Counseling with a parent to assist him/her to plan for the child with full information regarding options when the parent is doubtful of his/her ability to parent or it appears to the worker that the parent cannot do so.

REMAND -- Lit., "to send back;" frequently used to describe the order transferring a minor to adult court for trial, or an adult court's order sending a minor to the juvenile court. See also Certification, Fitness Hearings, Transfer and Waiver.

REPORTING STATUTES -- State laws requiring certain designated persons (physicians, nurses, teachers and the like) to report to proper authorities suspected cases of child abuse and injuries inflicted by unlawful means. Such statutes commonly confer immunity from any liability on the person required to make the report.

RES IPSA LOQUITUR -- "The thing speaks for itself." An inference that a person did something wrong because whatever caused the hurt was within his or exclusive control.

RESPIRE CARE -- Care provided for a child to allow the usual caregiver temporary relief. Respite care may be as short a time as a few hours to a week; care for longer than a week is no longer considered to be respite.

RESPONDENT --

1. The person who is the subject of a petition.
2. The prevailing party in a court case against whom an appeal is taken.

REVIEWING HEARING -- A judicial re-examination of a previous order.

SEALING -- In a juvenile court practice, the closure of juvenile records to all inspection except upon petition of the court. See Expungement.

SELF-SUPPORTING -- Providing for one's self financially without a need for continued child welfare assistance. It may include receiving payments from other assistance programs for example, ADC, SSI, college financial assistance, or former ward payments.

SEMI-OPEN ADOPTION -- Arrangement which is not legally enforceable, by which a birth relative meets with the adoptive parent(s) before the adoption decree, usually without a sharing of names and addresses.

SEQUESTER -- Separate; depart.

SERVICE AGREEMENT -- Written statement of specific tasks to be completed including who will complete them and timelines for completion to reach the goal. The agreement is a means of articulating the agency's expectations of parents and staff, by which both may be held accountable.

SOCIAL STUDY -- A report prepared for the judge's consideration at a dispositional hearing. Such reports review the minor's behavior and family history and frequently contain material that would be inadmissible in most judicial proceedings because of hearsay, lack of verification, etc. In many states, specific statutes permit their admission into evidence. Social studies may not be received by the court until after the petition has been adjudicated and jurisdiction established. Also called "social history," "social report," or "probation report."

STANDARD OF PROOF-- The amount of evidence needed for the judge/jury to make a decision in favor of either party.

1. **Preponderance of evidence:** The lowest standard of proof in civil cases. At least 51 percent of the evidence in favor of one of the parties.
2. **Clear and convincing evidence:** that amount of evidence needed to convince ordinarily prudent minded people that the evidence is strongly in favor of one of the parties. It is more than a preponderance of evidence.
3. **Beyond a reasonable doubt:** the highest standard of proof, the most often used in criminal cases. The evidence must, by virtue of their probative force, prove guilt.

STATUS OFFENSE -- The term essentially refers to non-criminal misbehavior which would not be criminal if committed by an adult (e.g., truancy, runaway, etc.). The behavior is an offense only because of the minor's status as a minor.

STATUTE -- A law enacted by a state legislature or the U.S. Congress.

STEPPARENT -- person who is married to the parent of a child, but has not adopted the child.

STIPULATION -- An agreement between the attorneys in a case, entered into in court, allowing a certain fact to be established in evidence without the necessity for further proof. Depending upon the requirements of the particular jurisdiction and the nature of the proceedings, stipulations may either be written or oral.

SUBPOENA -- An order issued by the court requiring the presence of a witness at a specific hearing; served upon the witness at his place of residence. Failure to obey a subpoena is punishable as a contempt of court. A subpoena is issued with the authority of the court, but is not a court order.

SUBPOENA DUCES TECUM -- Lit., "Bring with you," a subpoena served upon the person who has custody of records, commanding that such custodian bring the specified records to court on the stated day and time.

SUMMONS -- A written document notifying the defendant that an action has been initiated against him and requiring him to appear in court within a specified length of time to answer to the petition.

SUPERVISION -- Authorized and required guidance, treatment, and/or regulation of the behavior of a person who is subject to adjudication or who has been adjudicated to be an officer, performed by a correctional agency.

SURROGATE PARENT -- The individual appointed by a local school district to represent a handicapped ward whose parents are not available in regard to the child's education.

SUSPENDED DISPOSITION -- The court decision to delay imposing or executing a penalty for a specified or unspecified period, also called "disposition withheld."

SUSTAIN -- To uphold the legality or propriety of a motion or objection.

TERMINATION OF PARENTAL RIGHTS -- A judicial proceeding freeing a child from all custody and control by a parent or parents so that the child can be adopted by others.

TESTIMONY -- A statement or declaration made to establish a fact or facts and given under oath.

TRANSFER -- The sending of a case from the adult court to juvenile court for adjudication. Also, the sending of a probationer from one probation district or from one state to another for supervision.

VENUE -- Juvenile court venue refers to the county or counties within which a law suit may be initiated based on such factors as where the parents reside, where the child resides, or where the child is found.

VOIR DIRE -- "To speak the truth." The procedure during which lawyers question prospective jurors, to determine their biases, if any. Also the procedure in which lawyers examine expert witnesses regarding their qualifications, before the experts are permitted to give opinion testimony.

WAIVER -- The understanding and voluntary relinquishment of a known right such as the right to counsel or the right to remain silent during police questioning.

WARD -- A minor who is under the jurisdiction of the juvenile court for a law violation, status offense, or an allegation of finding of abuse, neglect, or dependency. Also, a person who has a legally appointed guardian is the ward of that guardian.

WARRANT -- Legal document issued by a judge authorizing the search of a place and seizure of specified items found there (search warrant), or the arrest or detention of a specified person (arrest warrant). No hearing is required and the person need not be notified, but the court must be given probable or reasonable cause to believe that the warrant is necessary for apprehension before it issues a warrant. Affidavits are frequently used in establishing this probable or reasonable cause.

WITNESS -- The person who gives testimony at the hearing. This person should see or note the facts by personal observation.

WRIT -- An order issued by a court commanding that a certain act or acts be done or not done. There is a wide variety of special writs and much state-to state variation in testimony, law and practice.

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